

### **REMARKS**

The Office Action mailed September 23, 2003 has been carefully reviewed and, in view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

#### **I. Summary of Claims**

Claims 1-14 and 16-48 are currently pending in the application, with claims 38-48 being newly added. Claims 1, 17, 20, 28, 38, 43, and 46 are independent claims.

In the outstanding Office Action, the Examiner rejected claims 1-5, 11-14, and 17-19 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent Number 6,487,796 to Avar, et al. The Examiner also indicated that claims 20-37 are allowed, and that claims 6-10 and 15-16 would be allowable, but are objected to as being dependent upon a rejected base claim.

Claim 1 is amended to substantially incorporate the recitation of claim 15 (which is now cancelled). Accordingly, Applicants submit that independent claim 1 is allowable, and that dependent claims 2-14 and 16 are also allowable for at least the same reasons.

#### **II. The Claims Patentably Distinguish Over The Applied Prior Art**

Avar discloses an article of footwear having a sole component that includes four generally cylindrical support elements or columns 108a-108d. An o-ring indentation 124 extends at least partially around an exterior surface of each column 108a-108d, and an o-ring 126 is received within the o-ring indentation 124. More specifically, the specification of Avar states that "[o]-ring indentation 124a is a horizontal indentation in vertical surface 118a that extends around a majority of the circumference of column 108a....Received in o-ring indentation 124a is o-ring 126a..." (column 7, lines 50-52 and 59). Similar recitations are made for columns 108b-108d. Accordingly, the bands that encircle the exterior surface of each column 108a-108d are disclosed as having the structure of an o-ring.

Independent claim 17 recites an article of footwear having an upper and a sole. The sole includes a support element with an exterior surface, at least one band, and at least one flange. The flange is attached to the band and extends outward from the band. The flange is, therefore, separate from the band, but attached to the band. Avar merely discloses a band, and does not disclose the concept of a flange extending outward from the band. Accordingly, Applicants

submit that independent claim 17 is allowable over Avar, and that dependent claims 18 and 19 are also allowable for at least the same reasons.

Independent claims 38, 43, and 46 recite methods for modifying properties of a sole of an article of footwear. The methods generally involve steps of positioning one or more bands and then repositioning one or more bands, thereby modifying the stiffness of the support element or sole. Applicants submit that this concept is not disclosed in the references of record and, therefore, independent claims 38, 43, and 46 are allowable over the references of record. In addition, Applicants submit that dependent claims 39-42, 44-45, and 47-48 are also allowable for at least the same reasons.

### III. Conclusion

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed by facsimile transmission on December 18, 2003 with a Request for Continued Examination. Should additional fees or an extension of time be deemed necessary for consideration of this Amendment, such fees or extension are hereby requested and the Commissioner is authorized to charge deposit account number 19-0733 for the payment of the requisite fee. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at (503) 425-6800.

Respectfully submitted,

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